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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,408	11/21/2003	Louis C. Cosentino	12771.1USC1	3341

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Attention of Nicholas P. Johns
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EXAMINER	
ASTORINO, MICHAEL C	
ART UNIT	**PAPER NUMBER**
3736	

DATE MAILED: 02/28/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,408	COSENTINO ET AL.	
	Examiner	Art Unit	
	Michael C. Astorino	3736	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *21 October 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *61-89* is/are pending in the application.

4a) Of the above claim(s) *74 and 87* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *61-73,75-86,88 and 89* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *10/2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The examiner acknowledges the response filed by the applicant filed October 21, 2005. Currently claims 61-89 are pending in the applicant, but claims 74 and 87 are withdrawn.

Note to Applicant: The examiner has only listed the rejections of independent claims 61 and 77 since those are the only claims that have been argued by the applicant. The examiner has included the headings and introductory paragraphs of the prior art rejections for completeness. The applicant should refer back to the previous office action, for explanations of the rejections of the dependent claims if necessary.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 61-73, 75-86 and 88-89 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The term "acute" in claims 61 and 77 is a relative term which renders the claim indefinite. The term "acute" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Additionally the claims which depend from claims 61 and 77 are rejected as being dependent on a rejected claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 77, 78, 83, 85, 86, 88 and 89 are rejected under 35 U.S.C. 102(e) as being anticipated by Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant).

Claim 77. A method for monitoring a patient with a chronic condition and establishing communication to a remote office regarding parameters of the patient, the method comprising:

measuring the patient's weight with a transducing device generating an electronic signal representative of the patient's weight (10);

processing (20) the electronic signals representing the patient's weight with a processor operatively coupled to the transducing device;

presenting a questions to the patient, relating to the patient's perception of the patient's condition with an output device coupled to the processor ("did you exercise today?", column 4, line 46);

receiving, in response to the questions, answers from the patient with an input device operatively coupled to the processor (30, column 4, line 39-53)

communicating the patient answers and the electronic signals representing the patient's weight to a remote processing computer with a communication device operatively coupled to the

processor and to a communication network (modem via 20, column 6, lines 1-10 and column 7, lines 1-65); and

analyzing the patient answers and the electronic signals representing the patient's weight with the remote processing computer to determine, based upon at least a portion of the answers to the questions regarding perception of the patient's condition, if the chronic condition is acute. (The processing computer issues an alert via the nurse, when the nurse believes such intervention is required. Otherwise stated when the condition is acute. Column 7, lines 1-65)

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 61, 63, 68, 71, 72, 73, 75, and 76 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claim 61 above, and further in view of Surwit et al. US Patent Number 6,024,699.

Claim 61. A system for monitoring a patient with a chronic condition and establishing communication to a remote office regarding parameters of the patient, the system transferring information from a first location to a remote office location, the system comprising:

(a) a monitoring apparatus (10) at the first location comprising

a transducing device (10) generating an electronic signal representative of the patient's weight;

a processor (20) operatively coupled to the transducing device and arranged to process the electronic signals from the transducing device;

a communication device (modem via 20, column 6, lines 1-10 and column 7, lines 1-65) operatively coupled to the processor and to a communication network (LAN, WAN, or POTS);

an output device (40) operatively coupled to the processor arranged to present questions to the patient, relating to the patient's perception of the patient's condition ("did you exercise today?", column 4, line 46);

an input device (30) operatively coupled to the processor arranged to receive answers from the patient in response to the questions; and

(b) a processing computer (figure 1) at the remote office location, the processing computer in communication with the monitoring apparatus, wherein the processing computer receives the electronic signal representing the patient's weight and also receives the inputs from the input device, (the processing computer issues an alert via the nurse, when the nurse believes such intervention is required, column 7, lines 1-65).

Lloyd et al. clearly states that both physiological and patient input to the system is viewed by the nurse in making a determination of a condition of the patient, but does not teach wherein the processing computer is configured to determine, based at least upon a portion of the answers to the questions regarding perception of the patient's condition, if the chronic condition is acute. Otherwise stated, this aspect of the limitation is to

automate the decision making of the medical provider. However, Surwit et al. a reference in an analogous art teaches wherein the processing computer is configured to determine automatically if the chronic condition is acute based on the input that is provided to the system (column 9, lines 54-58). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the system of Lloyd et al. in view of the automated determination of a patient's condition of Surwit et al., since Surwit et al states the benefit of automating the input to make a determination provides the benefit of allowing health care providers to quickly and easily monitor many patients simultaneously and to automatically identify patients with medical conditions and to organize identified medical conditions by severity.

Claim 62 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claim 61 above, and further in view of Melton, Jr. US Patent Number 6,038,465 A.

Claims 64, 65, 66, 67, 79, 80, 81, and 82 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant)

Claims 64, 65, 79 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A. (cited by applicant) as applied to claims 61 above, and further in view of Brown US Patent Number 5,997,476 A. (cited by applicant)

Claims 69, 70, and 83 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lloyd et al. US Patent Number 6,080,106 A (cited by applicant) as applied to claims 61, 68, 77 and 83 above, and further in view of Drinan et al 6,354,996 B1. (cited by applicant)

Response to Arguments

In regards to claim 61, Applicant's arguments filed October 21, 2005 have been fully considered but they are not persuasive. The applicant argues preemptively an obviousness rejection using Lloyd et al. nor Surwit et al. to reject claim 61. The applicant's position is that the two reference fail to teach by themselves or in combination, a personal computer configured to determine based at least upon a portion of the answers to the questions regarding perception of the patient's condition, if the chronic condition is acute. As stated above, Lloyd et al. teaches using the claimed inputs and leaving the determination to a nurse and Surwit et al. teaching automating the determination step based on the inputs to the system so as to prioritize the most acute cases. Surwit et al. is relied on to teach the automation process of the determination step of the nurse, and as such properly meets the limitation of the claimed invention. Therefore, claim 61 is properly rejected by the prior art references Lloyd et al. in view of Surwit et al., including the step of "wherein the processing computer is configured to determine, based at least upon a portion of the answers to the questions regarding perception of the patient's condition, if the chronic condition is acute."

In regards to claim 77 the examiner respectfully disagrees with the applicant. The applicant has stated that claim 77 requires a computer "configured to determine...if [a patient's] chronic condition is acute." Such a limitation is clearly stated in claim 61, but not in claim 77.

The relevant part of claim 77 states, "analyzing the patient answers and the electronic signals representing the patient's weight with the remote processing computer to determine, based upon at least a portion of the answers to the questions regarding perception of the patient's condition, if the chronic condition is acute." This limitation does not address who or what makes the determination step.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Michael C Astorino** whose telephone number is **571-272-4723**. The examiner can normally be reached on Monday-Friday, 8:30AM to 3:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max Hindenburg can be reached on 571-272-4726. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Astorino
February 20, 2006